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State of Orissa
v.
Bhupendra Kumar Bose

Gajendragadkar J.

Ordinance are, in our opinion, very similar to the rights with which the court was dealing in the case of Steavenson and they must be held to endure and last even after the expiry of the Ordinance. The Ordinance has in terms provided that the Order of Court declaring the elections to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would not come to an end as soon as the Ordinance expires. Therefore, we do not think that the preliminary objection raised by Mr. Chetty against the competence of the appeals can be upheld.

The result is that the appeals are allowed, the Order passed by the High Court is set aside, and the Writ Petition filed by Mr. Bose is dismissed with costs throughout.

Appeals allowed.

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December 22.

ARJUN PRASAD

v.

SHANTILAL SHANKARLAL SHAH AND OTHERS (AND CONNECTED APPEAL)

(K.C. DAS GUPTA AND RAGHUBAR DAYAL, JJ.)

Company—If can be present "in person" in meeting—Meeting of creditors—Person appointed to represent creditor company—Person voting on behalf of company—Validity of vote—Company Judge's order—If appeal lies to High Court—Indian Companies Act, 1913 (7 of 1913), ss. 3, 153—General Clauses Act, 1897 (10 of 1897), s. 3(42)—Letters Patent, cl. 10.

Subsequent to an order made for the winding up of a company, the Company Judge made a direction for action to be taken under provisions of s. 153 of the Indian Companies

Act, 1913. At the meeting of the unsecured creditors of the company a resolution was passed by the creditors present, either in person or through proxy, by majority in number as well as three-fourths in value. At this meeting the appellant claiming to represent two of the creditor companies cast his votes on behalf of the said companies in support of the resolution. No objection was taken at the meeting to the validity of the votes by any of the creditors who opposed the resolution. When the matter came up for orders before the Company Judge an objection was raised that the votes cast by the appellant on behalf of the two creditor companies were not valid, inasmuch as s. 153(2) of the Act requires that the creditors should be present either in person or by proxy at the meeting and that, in the present case, the two creditor companies, being corporations, could not be considered to have been present at the meeting "in person". The Company Judge overruled the objection on the grounds that it was raised at a late stage and that, in any case, the votes were valid because the appellant's attendance at the meeting amounted to the attendance of the companies "in person". On appeal, a Division Bench of the Patna High Court rejected the contention that no appeal lay to the High Court from the order of the Company Judge but only to the Supreme Court and, on the merits, set aside his order.

Held, that: (1) the word "Court" in s. 153(7) of the Indian Companies Act, 1913, means the Court exercising original jurisdiction, and. therefore, an appeal from the order of the Company Judge lay to the High Court under cl. 10 of the Letters Patent;

(2) though under the General Clauses Act, 1897, a company is a "person" so that whenever the word "person" is used in any statute a company would be included thereunder, unless there is some special provision by a law, a company which is not a physical person cannot "be present" at any place "in person"; and

(3) in the present case the votes cast by the appellant were not valid in law and it being admitted that if the votes were invalid the requisite majority of three-fourths in value requisite under s. 153(2) of the Indian Companies Act, 1913, would not be obtained and therefore no further action could be taken by the Court in the matter, the delay in raising the objection would not entitle the Court to ignore the legal defect of the votes.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 201 and 202 of 1961.

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Arjun Prasad
v.
Shantilal Shankarlal Shah

Appeals from the judgment and decree dated May, 16, 1958 of the Patna High Court in L. P. As. Nos 13 and 14 of 1957.

A. V. Viswanatha Sastri, R. K. Garg, M. K. Ramamurthi, D. P. Singh and *S. C. Agarwala*, for the appellants.

M. C. Setalvad, Attorney-General for India.

B. P. Rajgarhia and *K. K. Sinha*, for the respondents.

1961. December 22. The Judgment of the Court was delivered by

Das J.

DAS GUPTA, J.—These appeals raise a question as to the manner in which a creditor company can validly cast its vote at a meeting of the creditors held under the provisions of s. 153 of the Indian Companies Act, 1913. The question arises in connection with such a meeting held of the creditors of the Gaya Sugar Mills Ltd. On November 14, 1951, an order was made by the Company Judge in the Patna High Court for the winding up of the Gaya Sugar Mills Ltd. On October 6, 1953, an order was made by the learned Judge for action to be taken under s. 153 of the Indian Companies Act. Mr. G. C. Banerjee, who was appointed Chairman to hold the meeting of the creditors held separate meetings of the debenture-holders, secured creditors and of the unsecured creditors. In his Report he stated as regards the meeting of the unsecured creditors that "thirty unsecured creditors either in person or through proxy attended and took part in the meeting," and that ultimately a resolution proposed by one of the creditors, the Standard Vacuum Oil Company and seconded by another creditor Shri K. C. Agarwal was passed "by the creditors present by majority in number as well as three-fourth in value." It appears that at this meeting one Arjun Prasad claiming to represent two creditor companies, viz., Bhandani Bros., and the Hindustan

Coal Company Ltd., cast his votes on behalf of these two companies, in support of the resolution. No objection was taken at the meeting to the validity of these votes by any of the creditors who opposed the resolution and the Chairman proceeded on the basis that these votes were validly cast. It is not disputed that if these votes were not validly cast the requisite majority of three-fourths in value would not be obtained.

When the application came up for final hearing before the Court an objection was taken on behalf of creditors who opposed the scheme that the votes cast by Arjun Prasad on behalf of the two creditor companies, viz., Bhandani Brothers and the Hindustan Coal Company were not valid votes and so the requisite majority of three-fourths in value of the creditors had not been obtained. The Company Judge was of the opinion that there was no sufficient explanation as to why the objection as to the validity of the votes was not taken earlier and so the objection raised at the late stage could not be entertained. On the merits also he held that the resolution passed by the creditor companies authorising Arjun Prasad to attend the meeting of the unsecured creditors of the Gaya Sugar Mills Ltd., and vote on behalf of the companies, were sufficient in law to make his attendance at the meeting the attendance of the companies "in person" and his voting on behalf of the companies valid voting of the companies. Accordingly, he rejected this objection.

On appeal a Division Bench of the Patna High Court has allowed the objection, being of opinion that the delay in raising the objection would not entitle the Court to ignore the legal defect of the votes and that in law the votes cast by Arjun Prasad were not valid votes of these two creditor companies, viz., Bhandani Brothers and the Hindustan Coal Company. A contention that no appeal

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lay to the High Court from the order of the Company Judge was rejected. Therefore, the learned Judges set aside the order of the Company Judge as to this part of the case. They, however, gave a certificate that as regards the value and nature of the case, it fulfils the requirements of Art. 133(1)(a) of the Constitution and is a fit one for appeal to this Court. On this certificate the present appeals have been filed.

Three points were raised before us by Mr. Sastri in support of the appeals. The first is that from the decision of the Company Judge, an appeal lay to this Court and not to the High Court. Secondly, it was urged that the objection to the validity of the votes not having been taken earlier should not be allowed to be raised for the first time during arguments at the final hearing of the application. Lastly, it was urged that the votes were valid.

As regards the first point it is to be noticed that sub-s. 7 of s. 153, which was added in 1936 provides that an appeal shall lie from any order made by the court exercising original jurisdiction under the section to the authority authorised to hear appeals from the decisions of the Court. It therefore could not be disputed and was not disputed that an appeal did lie from the order made by the Company Judge on October 6, 1953. The controversy is whether the appeal lay to this Court or the High Court. In other words, the question is, which is the authority authorised to hear appeals from the decisions of the Court ? The "Court" here cannot but mean the Court exercising original jurisdiction. When the Company Judge exercises the jurisdiction he does it under the provisions of s. 3 of the Companies Act which says 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. The authority authorised to hear appeals from

appealable decisions of a Single Judge of the Patna High Court when exercising original jurisdiction lie to the High Court and not to this Court. (Vide Clause 10 of the Letters Patent). It necessarily follows that the appeal from the order of the Company Judge lay to the High Court and not to this Court. There is, therefore, no substance in the first point raised on behalf of the appellant.

The next contention that the objection cannot be entertained for the first time at the final hearing of the application appears to us to be equally unsound. It is undoubtedly true that the opposing creditors were guilty of negligence in not drawing the attention of the Chairman to what they considered to be a defect in the voting on behalf of the two creditor companies, viz., Bhandani Brothers and the Hindustan Coal Co., and no less negligence in not bringing this to the Court's notice at the earliest opportunity. Laches on the part of some creditors cannot however justify the Chairman or the Court in disobeying the requirements of the Act. If in law the two votes cast by Arjun Prasad for these two creditor companies were not validly cast the three-fourth majority requisite under s. 153, sub-s. 2, would not be there and so no further action under s. 153 could be taken by the Court in the matter. How can the Court turn a blind eye to the fact, if proved, that on the basis of valid votes at the meeting the requisite majority was not obtained, merely because the Chairman's attention was not drawn to the defect or it was not brought to the Court's notice earlier ? In our opinion, the learned Judges who heard the appeal were right in thinking that however deplorable the delay by opposing creditors in raising the objection might be, that would not be a sufficient reason for refusing to entertain the objection.

This brings us to the main question in controversy, viz., whether the resolutions passed by the

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Das J.

two creditor companies, viz., Bhandani Brothers and the Hindustan Coal Company, authorising Arjun Prasad to attend the meeting on their behalf and to vote there on their behalf made Arjun Prasad's voting valid voting. Section 153(2) of the Indian Companies Act is in these words :—

> "If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person, or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court be binding on all the creditors or the class of creditors, or on all members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the Company."

The agreement has to be of a majority in number representing three-fourths in value of those who are present either in person or by proxy at the meeting. The agreement of those who are not present at the meeting either in person or by proxy cannot be taken into consideration. Any creditor whether a corporation or a natural person can be present at a meeting by proxy. A natural person can of course be present at a meeting "in person". Can a corporation be present at a meeting "in person"? It appears to us that unless there is some special provision by a law, a company which is not a physical person cannot "be present" at any place "in person." It is true that under the General Clauses Act, 1897, a company is a "person", so that whenever the word "person" is used in any statute a company would be included thereunder. The definition in the General Clauses Act can however be of no assistance in interpreting the words "to be present in person", and the difficulty in the way of a company being present in person can be obviated only by statutory provisions or rules having the force of law.

Nor can the appellant derive any assistance from the English Case *In re Kelantan Coco, Limited and Reduced* (1) cited by the learned counsel. In that case, the Court was dealing with a petition for reduction of capital. In deciding whether the special resolution to reduce the capital of the company had been duly passed, the Court had to consider whether there was a quorum at the confirmatory meeting, at which one member of the company and one representative appointed under s. 68 of the Companies (Consolidation) Act, 1908, to represent a shareholder of the company, the Eastern Development Corporation, Limited, were present. The articles of Association provided: "two members personally present shall be a quorum." It was held that a representative appointed under s. 68 should be taken into account in considering whether there was a quorum. The provisions of s. 68 were similar to those of s. 80 of the Indian Companies Act, 1913, and thereunder a company which is a member of another company may, act as its representative at any meeting of that other company. The presence of such a representative was taken in the above case to amount to personal presence of a member of the company. The case does not deal with the question of a creditor company.

In the Companies Act, 1956, a provision has been introduced under which a company which is a creditor of another company may by resolution of its directors, authorises such person as it thinks fit to act its representative at any meeting of any creditors of the company held in pursuance of the Act and a person authorised in this manner shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the company, (s. 187(1)(b) and 2). No such provision however is to be found in the Indian Companies Act, 1913. It is unnecessary for us to

(1) 1920 Weekly Notes, Part I, p. 274.

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consider whether under this new provision the attendance of a person authorised in this manner at a meeting of the creditors will amount to attendance of the creditor company "in person". For, the present case is governed by the provisions of the Indian Companies Act, 1913 and not by this new provision.

When the Companies Act was amended in 1936, an addition was made in s. 246 which empowers the High Court to make rules, concerning the mode of proceedings inter alia "for the holding of meetings of creditors and members in connection with proceedings under s. 153 of this Act." Accordingly, a number of Rules were framed by the Patna High Court in exercise of this additional power. Rule 144 of the Rules states that a creditor or contributor may vote either in person or by proxy. Rules 145 to 153 deal with various questions as regards proxies. Of these Rule 150 lays down how a proxy is to be given where a creditor is a corporation. Admittedly, no proxy in accordance with Rule 150 was given by the two creditor companies, Bhandani Brothers and the Hindustan Coal Company, in the present case. There is nothing in these rules which can assist Mr. Sastri's argument that a resolution by the directors of the company authorising a director or some other person to represent the company at the creditors' meeting makes him a "present in person" in law for that company at the meeting.

Mr. Sastri's last argument was that as the business of the company has to be managed by the directors and the directors can delegate any of their powers to any one of themselves, the attendance of Arjun Prasad at the meeting should reasonably be construed as the attendance of all the directors and so the attendance of the company "in person". As we have already indicated it does not appear to us that in the Act of 1913 there is any provision

for attendance of the company "in person", but apart from that we wish to point out that the resolution made by the two companies do not appear to us to delegate the powers of the directors to Arjun Prasad.

The conclusion of the High Court that the votes cast by Arjun Prasad on behalf of the two companies., viz., Bhandani Brothers and the Hindustan Coal Company, were not valid votes is, in our opinion, correct.

The appeals are accordingly dismissed with costs. One set of hearing fee.

Appeals dismissed.

MAHARANA SHRI JAYVANTSINGHJI RANMALSINGHJI ETC.

v.

THE STATE OF GUJRAT

1961
December 22.

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Land Tenure, Abolition of—Amendment of enactment—If creates a new class of permanent tenants—Constitutional validity—If infringes fundamental rights of erstwhile tenure-holders—Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bom. LVII of 1958), ss. 3, 4, 6—Constitution of India, Arts. 14, 19 (1)(f), 31, 31-A.

The petitioners, who were tenure-holders, challenged the constitutional validity of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 and in particular ss. 3 and 4 read with s. 6 of that Act, as infringing their fundamental rights guaranteed by Arts. 14, 19 and 31 of the Constitution. Their case in brief was that those provisions by making certain non-permanent tenants permanent as from the commencement of the Bombay Taluqdari Tenure Abolition Act, 1949, enabled them to acquire occupancy right by payment of six times the assessment or the rent under s. 5A of that Act instead of 20 times to 200 times the assessment under s. 32H of the Bombay Tenancy and Agricultural Lands Act, 1948,