

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 468 of 2024

Appellant :- M/S Kotak Mahindra Bank Limited

Respondent :- Ms Elgin Mills Company Ltd

Counsel for Appellant :- Om Prakash Misra, Sandeep Arora

Counsel for respondent:- S.P. Singh, A.S.G.I., J. Nagar, Sr. Advocate, Purenendu Kumar Singh, Sanjay Kumar Om, Pratik J. Nagar, Shubham Agarwal

Hon'ble Arun Bhansali,Chief Justice
Hon'ble Vikas Budhwar,J.

1. This appeal is directed against order dated 04.04.2024 passed by learned Single Judge in Company Petition No.24 of 2009, whereby it has been observed that the Court will first hear Company Appeal No.1 of 2024 filed by British India Corporation Limited and Civil Misc. Application No.133 of 2024 filed by Union of India.
2. It is *inter alia* indicated that pursuant to the winding up of the Company Elgin Mills Company Limited, claims were made before the official liquidator and the same were determined by the official liquidator, whereby the claim of the appellant-Bank was accepted and that of British India Corporation Limited and Union of India were rejected.
3. The appellant filed Application No.138 of 2024 seeking payment of dividend, as accepted by the official liquidator and the British India Corporation Limited and Union of India questioned the rejection of their claim by filing Company Appeal/Civil Misc. Application.
4. It appears that when all the three matters came up before the Court, the learned Single Judge directed listing of the application filed by the appellant on 22.05.2024 and further observed that appeal/application filed by British India Corporation Limited and Union of India will be heard first on that day and the parties were

directed to file short notes of arguments alongwith judgments by 13.05.2024.

5. This appeal has been filed questioning the observations of the learned Single Judge in deciding the order of hearing of the appeal/applications pending before the said Court.

6. When question was put to counsel for the appellant about the maintainability of the appeal, reliance was placed on the provisions of Section 483 of the Companies Act, 1956 ('the Act of 1956') and it was submitted that the fact that under Section 529A of the Act of 1956, the appellant being a preferential creditor, is entitled to dividend and as the British India Corporation Limited and the Union of India are only unsecured creditors, therefore, on account of pendency of their cases, the claim of the appellant could not have been deferred by the learned Single Judge. It was prayed that the order deserves to be set aside and the learned Single Judge be directed to decide the pending application filed by the appellant being 138 of 2024 in preference to the applications filed by the British India Corporation Limited and the Union of India.

7. The provisions of Section 483 of the Act of 1956 reads as under:-

"483. Appeals from orders.--Appeals from any order made or decision given before the commencement of the Companies (Second Amendment) Act, 2002, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

8. A perusal of the above provisions would reveal that appeals from orders made in the matter of winding up of a Company by the Court lie 'in the same manner and subject to the same conditions' under which appeals lie from any order or decision of the Court. The order impugned being only a procedural order deciding the precedence as to which matter shall be heard first, passed by the Court to which every Judge and Court is entitled, cannot be subjected to appeal either under the provisions of Section 483 of the Act of 1956 or otherwise.

9. The submission made pertaining to preferential claim of the appellant, does not

affect the order passed by the learned Single Judge indicating the sequence in which the matters are to be heard inasmuch as the status of appellant's claim based on Section 529A of the Act of 1956 has not been decided or determined only on account of the sequence in which the applications are to be considered by the learned Single Judge.

10. In that view of the matter, no case for interference/issuing any direction is made out in the present appeal. The same is, therefore, dismissed.

Order Date :- 8.5.2024

SL/RK

(Vikas Budhwar, J) (Arun Bhansali, CJ)