
(1957) 02 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 49-D of 1955

Associated Clothiers Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-1957

Acts Referred:

Companies Act, 1913 — Section 30, 34, 40
Contract Act, 1872 — Section 4
Specific Relief Act, 1877 — Section 22 , 42
Stamp Act, 1899 — Article 23 , 62
Trusts Act, 1882 — Section 3

Citation : AIR 1957 P&H 261

Hon'ble Judges : Bhandari, C.J.;Khosla, J

Bench : Division Bench

Advocate : Gurbachan Singh, for the Appellant; Bishambar Dayal, for the Respondent

Final Decision : Allowed

Judgement

Bhandari, C.J.—This appeal raises a point upon the construction of Finance Department, Central Board of Revenue, Notification No. 1 dated the 16th January 1937, which is in the following terms:--

"To remit the stamp duty chargeable under Articles 23 and 62 of Schedule I to the said Act on instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913, in cases -

(i) Where at least 90 per cent, of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or

(ii) Where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent, of the issued share capital of the other, or

(iii) Where the transfer takes place between two subsidiary companies in each of

which not less than 90 per cent. of the share capital is in the beneficial ownership of a com-mon parent company;

Provided that in each case a certificate is obtained by the parties from the officers appointed in this behalf by the Local Government concerned that the conditions above prescribed are fulfilled."

2. In the year 1952 Phelps and Co., Limited, a company incorporated in the year 1937 found that large sums of money belonging to it had been embezzled by the carelessness of its auditors. The Directors accordingly decided that this company should be wound up and its affairs settled, that the name of the company should be altered from Phelps and Co., Limited into Associated Clothiers Limited, that the goodwill of Phelps and Co. which was of considerable value should be retained, that a new company bearing the name of Phelps and Co. Limited should be incorporated and that all the assets of Associated Clothiers should be taken over by Phelps and Co. in lieu of shares which were to be offered by the said company. In pursuance of this scheme or reconstruction the Directors took certain important steps on the 21st March, 1952, among others being :--

(a) that they changed the name of the company from Phelps and Co., Limited to Associated Clothiers Limited u/s 11 (4) of the Indian Companies Act,

(b) that a new company was incorporated under the name of Phelps and Co., Limited, and

(c) that the Associated Clothiers Limited (hereinafter referred to as the petitioners) entered into an agreement with Phelps and Co. Limited, according to which the petitioners agreed to sell and Phelps and Co., to buy the several assets of the petitioners (including a building situate in the Connaught Place, Delhi, valued at Rs. 2,24,637) for a sum of Rs. 18.58,892-10-9. A part of the consideration was to be paid in cash, a part in the discharge of the debts and liabilities of the petitioners and the balance of the consideration by the allotment of shares of the aggregate value of Rs. 12,30,000. The transfer of the premises in Connaught Place was to take effect from the 1st July, 1952.

3. In pursuance of this scheme the petitioners were allotted shares of the face value of Rs. 12,30,000 (out of the total issued share capital of Rs. 12,30,000) partly on the 31st May 1952 -and partly on the 14th October, 1952. After obtaining the consent of the Controller of Capital Issues the shares certificates thereof were duly issued to the petitioners and the latter were duly entered as share-holders in the statutory register of members maintained by Phelps and Co. After the shares had been allotted to the petitioners, Phelps and Co., called upon the petitioners to execute the sale-deed in regard to the premises situate in Connaught Place, Delhi, after obtaining a certificate of exemption from the payment of stamp duty under the Notification of 1937.

The petitioners prepared a draft deed of sale and requested the Collector of Stamps, Delhi, to certify that as both the companies were limited by shares and

as more than 90 per cent of the share capital of Phelps and Co., was in the beneficial ownership of the petitioners, the petitioners were exempt from the payment of stamp duty on the said deed of sale. The Collector of Stamps expressed his inability to grant the necessary certificate and the petitioners accordingly presented an application under Articles 226 and 227 of the Constitution. The learned Single Judge, before whom the petition came up for consideration, expressed the view that the state of affairs which gives rise to and justifies this exemption must be in existence before the transaction for transfer of property from one company to the other is entered and not an artificial state of affairs created afterwards for the purpose of taking advantage of this clause.

The petitioners' claim for exemption was rejected and the order of the Collector of Stamps upheld. The petitioners have come to this Court in appeal and the question for this Court is whether the learned Single Judge came, to a correct determination in point of law.

4. The notification of 1937 is designed to facilitate reconstruction of a company or amalgamation of two companies which are more or less under the same ownership so that they should be able to re-arrange their affairs without being saddled with liability for payment of stamp duties. A company wishing to claim relief from stamp duty under the provisions of this notification must satisfy the officers concerned (1) that the document evidences the transfer of properties between companies limited by shares, and (2) that shares of the transferee company are in the beneficial ownership of the transferor company to the extent of 90 per cent. Shares must be in the beneficial ownership of the transferor company but legal ownership is not necessary.

5. The first of the two conditions mentioned above has been completely satisfied in the present case, for the draft sale-deed evidences transfer of property between two companies limited by shares. The only question is whether at least 90 per cent. of the issued share capital of Phelps and Co., is in the beneficial ownership of the petitioners.

6. Now what exactly is the meaning of the expression "beneficial ownership" which appears in Clause (i) of the notification referred to above. This expression is not susceptible of a very clear and precise definition. According to Ballentine's Law Dictionary it means such a right to enjoyment of property as exists where the legal title is in one person and the right to such beneficial use or interest is in another and where such right is recognised by law and can be enforced by the Courts at the suit of such owner or of someone on his behalf. One is also said to have the beneficial ownership of land who has done everything to entitle him to a patent from the Government, and who therefore has the legal right to such patent, and all that remains to be done is for the proper officer to issue it.

7. The question now arises as to the point of time at which a person acquires the status of a share-holder of a company, obtains a right to demand shares and to exercise the rights of a share-holder. A mere subscription to shares in a company

does not constitute a subscriber a share-holder, for until the subscription is accepted, the subscription amounts to nothing more than an offer to take share. On allotment of shares and a communication of that allotment, the contract becomes complete and absolute and the subscriber becomes a share-holder.

It has accordingly been held that an application for shares in a company does not constitute the applicant a share-holder until the shares are formally allotted to him and the police of the allotment is formally given to him it is only on the communication of the allotment that the title to the shares subscribed by him comes to vest in him and it is only on the receipt of this letter that he has a right to receive the certificate of shares and to be put on the register of share-holders.

The application for shares and the letter of allotment constitute a valid and legally binding contract between the applicant and the company, "a contract the fruit of which is shares": *Collins v. Associated Greyhound Race Courses Ltd.* (1930) 1 Ch 1 (A). An applicant has an equitable right to the shares from the time when the letter of allotment is sent to him and can obtain specific performance of the contract by the company to allot those shares to him: *Tillotson Ltd. v. Inland Revenue Commrs.* (1933) 1 KB 134 at P. 152 (B). The issue of a certificate of shares is not necessary to constitute him a share-holder. In *re, Healons' Steel and Iron Co., Blyth's case* (1876) 4 Ch D 140 (C), the certificate is only the indicia of ownership of shares.

Section 30 of the Indian Companies Act provides that every person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company, and Section 40 declares that the register of members shall be prima facie evidence that a person whose name is on it is a share-holder. If in addition it be proved that such person has become, by subscribing to the prescribed sum or otherwise, entitled to a share in the company, the evidence that he is a share-holder is conclusive *Porter v. Emmens.* (1876) 1 CPD 201 affirmed (1876) 1 CPD 661 CA (D). The petitioners in the present case entered into an agreement with Phelps and Co., for the allotment of shares.

Shares were allotted to them in due course and the allotment was communicated to them. There was thus an application, an allotment and a communication of that allotment. A valid and binding contract came into existence between the petitioners and Phelps and Co., a contract which could be enforced by an action under s 42 of the Specific Relief Act. A certificate of shares was later issued and the name of the petitioners was entered on the register of share-holders. It seems to me therefore that the petitioners acquired not only the beneficial but also the legal ownership of the shares. Prima facie therefore they are entitled to the exemption for which a provision has been made in the notification of 1937.

8. But Mr. Bishambar Dayal, who appears for the State, contends that the agreement dated the 21st March, 1952 was a composite agreement according to which certain things were to be done by Phelps and Co., and certain other things

were to be done by the petitioners. The shares which were to vest in the petitioners could vest in them only if they had performed their own part of the contract. They failed to fulfil certain terms of the contract for the property known as 9-A, Connaught Place, which was to be transferred to Phelps and Co., has not been conveyed so far.

This being so, it is argued, the petitioners cannot be said to have acquired the shares allotted to them or to have become beneficial owners of 90 per cent. of the share capital of Phelps and Co., Limited. Our attention has been invited to certain decisions such as *Manicka Goundan Vs. Elumalai Goundan and Others*, *Ramananda Paul and Others Vs. Pankaj Kumar Ghosh, Receiver and Others*, and *Udit Upadhia v. Imam Bandi Bibi* ILR 24 All 402 at pp. 410, 419 (FB) (G), but I must confess with regret that I have not been able to discover any observation which may possibly support the proposition propounded by the learned counsel.

9. An enforceable contract presupposes the existence of an offer and an acceptance and a consideration. It is binding on both parties so that action can be maintained by each against the other. If the contract is broken or time for performance has expired, it is open to the injured party either to bring an action for specific performance or to institute a suit for recovery of damages. If the contract is repudiated the injured party may either rescind the contract in toto or may terminate the contract for purposes of further performance and hold the opposite party liable for damages sustained by reason of the repudiation. A failure of consideration is not a ground for treating shares as unpaid: In *re Continental and Shipping Butter Co., Mege and Angler's case* 1875 WN 208 (H) although an application for shares made upon a condition precedent does not become binding on the applicant until it has been complied with or its performance waived.

10. The agreement of the 21st March, 1952 "between the petitioners on the one hand and Phelps and Co. on the other contains reciprocal promises by which one party undertakes to do one thing and the other party another. Phelps and Co. has fulfilled a part of its contract by allotting to the petitioners the number of shares which it had agreed to sell. The share certificates have been issued and the name of Associated Clothiers has been placed on the register of shareholders. All formal acts have been completed and in the eye of law the petitioners have been put in possession of the shares. They have acquired the status of an owner, or at any rate a beneficial owner, of at least 90 per cent of the issued share capital of Phelps and Co. The contract contains no condition precedent the fulfilment of which alone would have vested the right of ownership in the petitioners.

It may be that the contract contains a number of reciprocal promises some of which have been performed and some of which have not but that fact alone would not, in my opinion lead one to the conclusion that the petitioners have not fulfilled the conditions on which alone exemption can be claimed. If the petitioners fail to comply with the terms of the contract it would be open to Phelps and Co. to bring an action against them for specific performance or for

recovery of damages- Phelps and Co. has no power to recall the shares which have been allotted by them or to divest the petitioners of the right of ownership which has come to vest in them. .

11. For these reasons I would allow the appeal, set aside the order of the learned Single Judge and direct the officers concerned to grant a certificate to the petitioners that the conditions prescribed in the notification of 1937 have been fulfilled. I would order accordingly. There will be no order as to costs.

Khosla, J.

12. I agree.