

(1914) 04 AHC CK 0039
In the Allahabad High Court

Bahadur Singh

APPELLANT

Vs

Shiam Sundar Tug

RESPONDENT

Date of Decision : 09-04-1914

Acts Referred:

Citation : (1914) ILR (All) 365

Hon'ble Judges : Henry Richards, C.J.;Pramada Charan Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Henry Richards, C.J. and Pramada Charan Banerji, J.—This appeal arises out of a suit brought under the following circumstances: The plaintiff was the registered holder of certain shares in a concern known as the Indian Co-operative Bank, Limited. On the 18th of July, 1911, the plaintiff executed a deed of transfer of the shares to the defendant in consideration of Rs. 500. On the same date the defendant executed a bond in favour of the plaintiff whereby, after reciting that the defendant was indebted to the plaintiff in the sum of Rs. 500, being the price of the shares transferred to him, he covenanted to pay Rs. 500 with interest at 12 per cent, par annum. The money has not been paid, and the plaintiff instituted the present suit to recover the amount due under the bond. The defendant pleaded, first, that the transfer and the bond were obtained from him by undue influence and, secondly, that there had been a failure of consideration inasmuch as the company had refused to recognize the transfer and register the transferee as the holder of the shares. The court of first instance decreed the claim. The lower appellate court, while finding that there was no undue influence, dismissed the suit on the ground of failure of consideration. The exact circumstances under which the transfer and the bond were executed have not transpired. If we were to speculate on the matter, we might probably think that the plaintiff was anxious to get rid of his shares, and that he brought some pressure on the defendant, who was the managing director of the concern, to take the shares from him. When we use the word "pressure" we do not

necessarily mean "illegal pressure." The defendant contends that the company refused to recognize the transfer. Under the deed of transfer the plaintiff never undertook to obtain the recognition of the transfer by the company. On the face of the contract of transfer the transferor was immediately entitled to receive the sum of Rs. 500 and the bond in suit was given to secure the indebtedness of the defendant to the plaintiff for the value of the shares. There is an endorsement on the deed of transfer under the hand of a person by the name of Sidheshwar Ghose, who is described as the Chief Manager of the company. After citing a large number of legal rulings he declined for various reasons to register the transfer. He purported to do this on the delegated authority of the directors. We have looked at the resolution which is relied on as giving this authority and we find that no authority to refuse to register shares was conferred upon him. It thus does not appear that the company ever refused to recognise the transfer. Refusal could only be by a resolution of the company in pursuance of the articles of association.

2. It is then contended that the plaintiff was himself a director of the company and that the shares which he purported to transfer were the shares which he held as "qualification shares" for his being a director. In the articles of association which were in force at the time of the transfer, there is nothing to prevent a director from transferring his shares. New articles of association are said to have been adopted subsequently with retrospective effect. The provisions of some of these new articles of association are very suspicious, but even if we assume that the new articles of association were legally adopted, they could not apply to the transfer, which had been made long before they came into operation.

3. The defence fails, so far as it is based on the allegation of undue influence, on the finding of fact by the court below.

4. In our opinion, there was no failure of consideration. This being so the appeal must be allowed. We, accordingly, set aside decree of the court below and restore the decree of the court of first instance with costs.