
(1965) 03 RAJ CK 0013
In the Rajasthan High Court
Case No : First Appeal No. 38 of 1957

Bapulal	Vs	APPELLANT
Laxmi Bharat Trading Co. and Others		RESPONDENT

Date of Decision : 09-03-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 2
Companies Act, 1913 — Section 4
Contract Act, 1872 — Section 65, 70

Citation : AIR 1966 Raj 14 : (1965) RLW 173

Hon'ble Judges : I.N. Modi, J;B.P. Beri, J

Bench : Division Bench

Advocate : Chandmal, for the Appellant; Hastimal, for the Respondent

Final Decision : Dismissed

Judgement

Modi, J.—This is a civil regular first appeal by the plaintiff in a suit for money which has been dismissed by the Senior Civil Judge, Udaipur, by his judgment dated the 18th May, 1957.

2. The appellant is Bapulal Soni Saraogi who filed the suit out of which this appeal arises as President of an association which is called "Naj Vitran Committee" with its office at Udaipur, on behalf of himself and the other members or that committee. The respondents before us are three in number, the first being a partnership firm which carried on business in the name of Laxmi Bharat Trading Company, and the second and third being Hiralal and Pannalal, who are alleged to be the partners of the said firm. Respondent No. 2 Heeralal having died during the pendency of this appeal, his legal representatives, namely, Ambalal and others have been substituted in his place by an order of this Court dated the 15th October, 1958. The suit was originally brought against nine other persons, one of whom was abandoned as untraceable, and the plaintiff compromised it with the remaining 8 for a sum of Rs. 8,000/- with the result that we are not concerned with them in this appeal.

A considerable part of facts leading up to this litigation stands either admitted by the parties or has been satisfactorily proved so that the same has not been challenged before us in this appeal. We propose at the outset to refer to these facts. The said Naj Vitran Committee, of which Bapulal and his companions were members, was established in the city of Udaipur with the object of helping the Government to properly distribute grain among the public sometime towards the middle of 1947 and appears to have remained in existence until 1950 or 1951, though we do not know the exact dates in these respects. This committee consisted of 115 members and was registered under the Mewar Societies Registration Act (No. VII of 1941). Defendant Khem Raj, who has appeared as P. W. 4 at the trial was the Secretary of both the Naj Vitran Committee and the defendant Laxmi Bharat Trading Company. It is further admitted that there were money dealings between these two bodies and that the said Khem Raj was the person who loaned at various times sums of moneys aggregating to a figure of Rs. 14,601/- as Secretary of the Naj Vitran Committee to the defendant Laxmi Bharat Trading Company. It is also not disputed that interest was payable on the loan at 9 per cent per annum.

As the defendant failed to repay the aforesaid loan, the present suit was brought by Bapulal in a representative capacity on behalf of himself and the other members of the said Naj Vitran Committee against the defendants for a sum of Rs. 14,601/- and interest, deducting certain repayments which are not disputed, the total thus working out to a sum of Rs. 16,485/8/-. This suit was resisted by defendant respondents Heeralal and Pannalal and certain others, and with these latter the plaintiff having already compromised the suit we are not concerned at this stage. The principal pleas in so far as they are material for the purposes of this appeal were that the Naj Vitran. Committee was an illegal body having not been registered u/s 4 of the Mewar Companies Act, which is an exact counterpart of Section 11 of the Indian Companies Act, 1913, (1950?) and, therefore, the present suit is not maintainable at its instance, and further that Hiralal in any case was not a partner of of the Laxmi Bharat Trading Company. The trial Court accepted both these pleas and dismissed the plaintiff's suit. Aggrieved by this decision the plaintiff has come up in appeal to this Court.

3. It has been strenuously argued on behalf of the appellant before us that the findings of the trial Court referred to above are erroneous. Elaborating his argument on the first point, learned counsel vehemently contended that the Naj Vitran Committee was not at all a company formed by its members to carry on any business with the object of acquisition of gain within the meaning of Section 4 of the Companies Act, and therefore, it was competent to bring the present suit. Alternatively learned counsel argued that even if this Court were not pleased to accept this contention as correct the plaintiff was entitled to the benefit of Ss. 65 and 70 of the Contract Act and the present suit should have been decreed on that score. His further contention was that there was ample material on the record to show that respondent Heeralal deceased was a partner of the Laxmi Bharat Trading Company, and that the trial Court had fallen into a

clear error in not taking into consideration the glaring fact that Heeralal himself had abstained from the witness box in support of the version which he put forward in his written statement. We propose to deal with these contentions in the order in which we have set them out above.

4. As to the first contention we would read Section 4 of the Companies Act at this place in so far as it is material for our purpose:

"4. (1) * * * * (2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Indian law or of Royal Charter or Letters Patent,

3. * * * * * 4. Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

5. Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees."

Now. it is not in dispute that the Naj Vitran Committee with which we are concerned in this case was an association of as many as 115 persons who were all dealers in grain. It is also common ground between the parties that this association inter alia purchased food grains from the State and made itself responsible for their distribution in the city of Udaipur at the same rates at which the Committee received them from the latter.

In order to carry on this activity it is admitted by the plaintiff that the Committee organised a share capital of (he value of Rs. 1,50,000/- and issued shares of Rs. 750/- each among its members no member being allowed to purchase more than two shares and it also called for a sum of Rs. 500/- per share from each shareholder. In return for all this work it is also not disputed between the parties that the Naj Vitran Committee was to receive a commission of Rs. 2/- per six maunds of grain which was to cover all the expenses incurred by them in weighment, labour, transport and other incidental expenditure. So far there is no serious dispute between the parties. The bone of contention, however, is whether this Committee undertook this business with the object of acquisition of gain as the defendants put it, or as a mere matter of social service as the plaintiff would have it believed. The trial Court came to a finding against the plaintiff on this aspect of the case and this has been strongly challenged before us on the ground that it failed to take due account of the background against which this Committee was formed as also certain other factors to which we may briefly invite attention at this place.

It was thus urged that the Committee was formed at the instance of the

Government to help it in the work of distribution of grain in 1947 and the following years when there was considerable scarcity of grain and lack of even distribution thereof as a result of the situation brought in the wake of the Second World War. It was also urged in this connection that the Committee was to receive its entire stock of grain from the Government and that the distribution was to be done under the supervision of the Director of Civil Supplies of the State and further that the grain was required to be sold on the prices at which they were purchased by the Committee from the Government, or, at any rate, according to the prices fixed by the Government in that behalf. If the matter rested simply at this there would perhaps be something to be said for the plaintiff and we might have been inclined to take a more favourable view about the maintainability of the plaintiff's suit than the one which prevailed in the Court below. But unfortunately for the plaintiff there is unmistakable evidence available from his own witnesses which clearly goes to show that an element of acquisition of gain did enter into the formation of this Committee and at any rate was certainly one of the objects with which it was formed.

In this connection we would refer to the evidence of Motilal (P. W. 1), Jeewanlal (P. W. 2), Sohanlal (P. W. 3) and Khemraj (P. W. 4). But before we refer to the evidence of these witnesses, we pause for a moment to point out that the plaintiff has signally failed to produce in his evidence any material such as the memorandum of the committee or association which would have given us an unmistakable insight as to the aims and objects with which this Committee was formed. Normally we would expect all this material to be with the plaintiff, but he has not adduced any reason whatever why he has failed to produce it. Assuming though not admitting that the relevant material was with Khemraj (P. W. 4), who was for some time the Secretary of the Committee, we would have still expected the plaintiff to have made some attempt to have summoned it from him but nothing of the kind was done. This failure on the part of the plaintiff, in our opinion, goes a long way to weaken his case, the more so, as we have unmistakable evidence from his own witnesses that the Naj Vitran Committee even if it had been formed with the advice or under the inspiration of the State Government had doubtless been formed with the object of acquisition of monetary gain.

Motilal (P. W. 1) has deposed that some profits had been distributed among the share-holders by the Committee. Jeewanlal (P. W. 2) was the Secretary of the Committee before 1949 when he was succeeded by Khem Raj (P. W. 4). This witness has gone to the length of saying that the Committee had realised a sum of about Rs. 10,000/- to 15,000/- as the commission received by it from the Government, and further that a sum of Rs. 100/- was distributed as profits to each of the members. The evidence of Sohanlal (P. W. 3) is to the same effect. Turning next to the evidence of Khemraj (P. W. 4) he has deposed in unmistakable terms that the Committee had been formed with the object of acquiring monetary gain, and that a profit of Rs. 100/- per two shares had been distributed among the members on one occasion. We further have it from this

witness that in addition to the work of distribution of grain purchased by it from the Government for distribution among the public the Committee undertook some other activities also. As instances of these, he mentions the contract taken by the Committee for the supply of certain material to the Jail at Udaipur and for certain other supplies to the refugees. He further deposes that the Committee did earn profits on these undertakings. It would be convenient at this place to mention that there is evidence on record on the side of the defendants to show that so far as the contracts, for the supply of provisions to the Jail are concerned the Committee sub-let the contract for a sum of Rs. 451/-per month (See the evidence of Sohanlal (D. W. 1) in this connection).

The evidence of these witnesses receives support, though not direct, from the evidence of plaintiff Bapulal himself. He was compelled to admit in his cross-examination that the Committee had obtained the contract at a public auction for the supply of certain material for the prisoners in Jail at Udaipur, and that this contract related to uncontrolled commodities also. He was further compelled to admit that the committee had also taken a contract for the supply of certain goods to refugees though this work was later given up as its hands were more than full. A direct question was put to this witness whether any profit was distributed among the members of the Committee and his reply was not as straightforward as we should have liked it to be. At one stage he deposed that a sum of Rs. 50 per share was distributed, but almost in the next breath he resiled from This statement and stated that this sum was adjusted later against the price of the share itself. A further question was then put to him as to how the aforesaid sum of Rs. 50 was booked in the account books of the Committee and his reply curiously enough was that he did not remember.

That being the state of the plaintiffs own evidence we consider it unnecessary to deal at length with the evidence produced by the defendants in this behalf and have no hesitation in coming to the conclusion that the finding of the trial Court that the committee in question had been formed with the object of acquiring monetary gain is perfectly well founded. It must follow as a corollary from the finding to which we have come above that Section 4 of the Companies Act is at once attracted and, therefore, there can be no escape from the conclusion that this was an illegal association falling within the mischief of the said section. We hold accordingly,

5. The next question is: what is the effect of the non-registration of the Committee under the Companies Act, for it is nobody's case that its Constitution is or can be saved by any law made by the Mewar State. We may refer to a few decided cases in this connection. In *Tan Waing v. Bo He* in AIR 1932 Rang 167 there was an unregistered society of 124 members formed with the primary object to aiding the Chinese who were poor or otherwise in temporary financial embarrassments. Every earning member was to pay Re. 1 as monthly subscription and thereafter by a resolution the society required that its members should pay one or more annas per day, and form a fund out of which any Chinese

person could get a loan at "2 per cent per mensem in his difficulty; that such contribution was to continue for three years after which period the amount contributed was to be returned to the members and the interest accrued thereon by lending was to be spent in charity. It was held that the society was formed inter alia for the purpose of carrying on a money lending business that had for its object the acquisition of gain by individual members of the society and therefore the society fell within Section 4. On this finding it was further held that a representative suit brought by the President of the Society for recovery of a certain sum of money lent to the defendant was not maintainable. This case, in our opinion, affords a very near parallel to the case before us.

6. In *Pattada Uthayya v. Pattada Somayya* AIR 1955 Mys 149 an association had been formed by certain members of a family 73 in number and they had set up a number of funds for the benefit of the family which were to be managed by some of them. Subsequently some of the members conveyed their intention to the defendant not to continue as members of the association and they claimed the payments due to them and their share in the said funds. In a suit thus brought by the plaintiffs it was held that the association had been formed for carrying on business with the object of acquisition of gain and, therefore, as it was not registered, under the Companies Act, the suit filed by the plaintiffs was not maintainable.

7. In *Union of India v. Commercial Association, Amritsar* AIR 1959 Pun 104 it was held that an association of more than 20 members which had been formed for the purpose of purchasing cloth and selling it at profit was hit by Section 4 of the Companies Act, and that without registration thereunder it was an illegal body. It was further held that the fact that the association like several others had been formed under the advice of the Textile Control Department for convenience of organising purchases and sales can make no difference, and will not absolve such a body from the necessity of getting itself registered if the business which it carries on is for the profits of the members. It was also laid down that there was no need to incorporate in the Act itself a statutory provision barring a suit by such an illegal body because it was a fundamental provision that an illegal body could not maintain a suit. This view seems to us to have received the approval of the Privy Council in AIR 1930 300 (Privy Council) and of our own Supreme Court in *Seth Badri Prasad and Others Vs. Seth Nagarmal and Others*,

It is correct that the last mentioned case was a case of a claim made by some members of such an illegal association against another member thereof but that in our opinion does not make any difference as to the correct legal position on the point arising before us, as their Lordships observed:

"When the association is itself illegal, a court cannot assist the plaintiffs in getting accounts made so that they may have their full share of the profits made by the illegal association."

In view of these authorities we are definitely of the view that the present suit,

which has been brought by and on behalf of the members of the Naj Vitran Committee, Udaipur, being an unregistered association under the Companies Act, cannot be maintained and we affirm the finding of the trial Court in this respect.

8. This brings us to the alternative case of the plaintiff in so far as it is based on Sections 65 and 70 of the Contract Act. In the first place, we should like to point out that this alternative case was not raised by the plaintiff in the trial Court at any stage of the suit. We should further like to point out that it has not even been raised in the grounds of appeal filed on behalf of the plaintiff in this Court. The learned counsel is, therefore, not strictly entitled to urge it for the first time in this Court. Even if we were not to rest our decision on this narrow ground we have not felt persuaded to hold that Sections 65 or 70 afford any help to the plaintiff in the circumstances of the present case. Section 65 lays down that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Then Section 70 enacts that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

As we understand these sections and the principle underlying them we do not think that they can be pressed into use where a contract becomes or is discovered to be not merely void but where it is illegal in the sense that the object of or the consideration for the contract is not lawful being as for instance, violative of Section 23 of the Contract Act or in the sense that the person entering into the contract has no legal competence whatever to function as such. We are assuming for the purposes of this argument that the expression "person" as used in Section 70 includes an association of persons even if not registered. The point that we wish to make is that where a party entering into a contract has no legal capacity whatever to enter into it, nay its very functioning amounts to a criminal offence, as it undoubtedly is, in a case like the present, no benefit of either section 65 or 70 can possibly be given for the enforcement of such contracts, for, to do so would, in our considered judgment, amount to rendering the provisions of Section 4 of the Companies Act entirely nugatory.

We may in this connection also refer to State of West Bengal Vs. B.K. Mondal and Sons, to which our attention was called by the learned counsel for the appellant. This was a case as to the applicability of Section 70 of the Contract Act with respect to a claim for the construction of certain works which had been completed by the plaintiff though the formal contract had not been entered into in compliance with the provisions of Section 175(3) of the Government of India Act, 1935. Their Lordships held that the contract having not been entered into in compliance with the mandatory provisions of that section was invalid. Nevertheless it was further held that Section 70 was attracted into application

and in this view of the matter the plaintiff's claim was given effect to. We have carefully considered the facts and circumstances of this case and are of opinion that it is entirely distinguishable from the type of case we have before us. The contract in the case before their Lordships fell not because of any illegality about the inherent nature thereof or having regard to the capacity of the person making it but because it was not made according to the form prescribed u/s 175(3) of the Government of India Act, 1935. The position in the case before us is quite different. Here, having regard to the provisions contained in Section 4 of the Companies Act the Committee with which we are concerned had no legal capacity to act whatever and in fact was an illegal association, and, that being so, to give effect to a contract entered into by such an association in a court of law would be a clear violation of that law and no court of law can countenance such a claim.

We are tempted in this connection to refer to the discussion relative to the position of a minor which is to be found in paragraph 21 of the report of their Lordships' judgment. Dealing with the case of a minor with reference to Section 70 of the Contract Act, their Lordships distinguished that type of case from the case of an infirmity arising from the violation of Section 175(3) of the Government of India Act by pointing out that while Section 175(3) governed the mode of making a contract by or with the Government and provided for the making of the same in a specified manner, a contract entered into with a minor was void ab initio and therefore in the latter class of cases the principle of voluntary acceptance of the benefit of work done or thing delivered which is the foundation of the claim u/s 70 would not be available, and so Section 70 cannot be invoked against a minor.

The case before us seems to fall within an equally exceptional class of cases. And with all respect, if we may put the whole thing in a slightly different manner, we should like to point out that where there is a complete want of capacity to enter into a contract, and the infirmity attaches not merely to the mode of making it or where the contract has been made by a party or an association whose very existence is unlawful in the eye of law and it is forbidden from functioning as such, then a Court of law cannot but be precluded from enforcing it. We hold accordingly. The result therefore, is that the plaintiff is not entitled to have his claim decreed on this alternative ground also.

9. In view of the conclusion to which we have come on the aforesaid aspect of the case we consider it entirely unnecessary to deal with the question whether the finding of the trial court that respondent Heeralal was not proved to be a partner of the Laxmi Bharat Trading Company is correct or otherwise; but, if it be necessary to do so we would content ourselves by saying that the finding of the trial court on this aspect of the case does not call for any interference by us. Even according to the plaintiffs case it was as a representative of the firm M/s. Dalchand Nenchand that Pannalal son of Heeralal had signed the agreement of partnership. It is not disputed before us that the manager of this joint Hindu

family firm was Heeralal. If so, we see no reason why Heeralal should have omitted to sign it and instead Pannalal should have done so. The fact, however, is that Heeralal did not sign this agreement and only Pannalal did. But then the further question is: can Heeralal be bound by something which was done by his son? The answer to this question is obviously in the negative for there is no evidence to show that Pannalal had done so with the express or implied consent of his father Heeralal, and in this view of the matter, there is no force in this point and it is hereby repelled.

10. The result is that this appeal fails and is hereby dismissed, but having regard to all the circumstances of the case we leave both the parties to bear their own costs throughout.