
(1914) 04 AHC CK 0049
In the Allahabad High Court

Changa Mul and Others

APPELLANT

Vs

Provincial Bank Ltd.

RESPONDENT

Date of Decision : 29-04-1914

Acts Referred:

Citation : AIR 1914 All 471 : 25 Ind. Cas. 210

Hon'ble Judges : Rafique, J;Piggot, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The three appeals of Changamul, Durga Prasad and Jagmander Das marked as Nos. 196, 197 and 198 respectively of 1913 arise out of the proceedings in liquidation of the Provincial Bank Limited, Meerut. It appears that the Official Liquidator called upon the three appellants to contribute the balance of the price of shares which had been allotted to them at different times by the Board of Directors of the Bank. The appellants objected to be put on the list of contributories and supported their objection on several technical pleas. The learned Judge disposed of their objections in a very summary manner without discussing the objections or giving any reason for rejecting them. In appeal three objections are urged on behalf of the appellants, namely, that the Board of Directors which allotted the shares to the appellants was not properly constituted, that the allotment was made after an unreasonable delay and that no notice of allotment was given to or received by the appellants. The first objection is founded on an, alleged defect in the constitution of the Board of Directors which allotted the shares to the appellants. It is said that under the Articles,, of Association the least number of Directors, required to form a quorum was three., The Board that allotted the shares to the appellants was composed of three persons two of whom only were regularly appointed Directors. Changamul was allotted shares at a meeting held on September 17th, 1910, at which three persons were present, viz., Shafique Ilahi, E. A. Roberts and Abdul "Majid. The first two were among the first three Directors originally appointed and named in

the Articles of Association. Abdul Majid was, according to the Directors' Minute Book, appointed at a meeting of the Original Directors held on May 1st, 1910. At that meeting only two Directors were present, namely, E. A. Roberts and Shafique Ilahi and it was resolved that as the third Director Parbhu Dayal could not always attend, Fakir Chand and Abdul Majid should be added to the Board of Directors, Under the Articles of Association in case, of an occasional vacancy among the Directors the remaining Directors could appoint a properly qualified member of the Company as Director pending the confirmation of his appointment at a general meeting of the: share-holders. But there was no vacancy as Parbhu Dayal had not resigned and even if he had, only one person could be appointed; in his place and not two. Moreover, the name of Abdul Majid must have been added after the meeting of May 1st, 1910, and, probably at the meeting of September 17th, 1910. The proceedings of September 17th, 1910, as recorded in the Directors' Minute Book, at first mention the name of Fakir Chand as one of the three Directors pre-sent. But his name is scored off in pencil and that of Abdul Majid added in ink at the end. The appellants suggest that the name of Fakir Chand was written at first-in the hope that he could be present at the meeting but as he did not come the name of Abdul Majid, a share-holder, who was probably sent for at the time, was added and in order to show that he was a Director regularly appointed, his name was added; to the proceedings of May 1st, 1910. That the suggestion as to the interpolation of Abdul Majid's name in the proceedings of the meetings of May 1st, 1910, and September 17th, 1910, is not unfounded, reference is made to the circulation of a printed notice convening a general meeting for the confirmation of Fakir Chand's appointment and the absence of any such notice about Abdul Majid. The shares to Durga Prasad and Jugminder Das were allotted at a meeting held on April 7th, 1912, at which E. A. Roberts, Fakir Chand and H. Hussan were present. It is said that there is nothing to show, that Fakir Chand's appointment was confirmed at a general meeting and his provisional appointment at the meeting of May 1st, 1910, was irregular. As to H. Hussan he was appointed in place of Shafique Ilahi who resigned on January 4th, 1912. The Board that appointed H. Hussan consisted of E. A. Roberts and Fakir Chand and the approval and signature of Parbhu Dayal were obtained subsequently. The allotment of shares to Changa Mal was thus by two regularly appointed Directors only, viz., E. A. Roberts and Shafique Ilahi, and to Durga Prasad and Jagminder Das by one Director only, viz., E. A. Roberts.

2. As no business of the company could be transacted without a quorum of three Directors the allotment of shares to the appellant was, therefore, clearly invalid and the latter are not bound by such allotment. In support of his contention that such an allotment is invalid at law the learned Counsel for the appellants has relied on the case of *In Re: British Umpire Match Co. Limited*, Ex parte Ross 49 L.T. 291.; We think that the objection of the learned Counsel as to the irregularity in the appointment of Fakir Chand and Abdul Majid is well-founded. But we cannot say on the evidence in the case that the name of Abdul Majid was inserted in the proceedings of the meeting of May 1st, 1910, after the meeting.

The appointment of H. Hussan seems to have been regular as there was a vacancy in the Board of Directors and he was appointed to the vacancy by the remaining Directors. However, ever the objection for the appellants remains that on both the occasions, viz., the 17th of September 1910 and the 7th of April 1912, there were only two regularly appointed Directors, as Abdul Majid in one case and Fakir Chand in the other was not a properly appointed Director. It may also be conceded that the case relied upon by the learned Counsel supports his contention that allotment of shares by an irregularly constituted Board of Directors is invalid". But other cases, some of them later, lay down that if the Articles of Association of a company validate an act done by a de facto Director in a bonafide manner the Courts will uphold his act; vide, In Re: Scottish Petroleum Co. (1883) 23 Ch. 413 : 49 L.T. 348 : 31 W.R. 846, Daieson v. African Consolidated Land and Trading Co. (1898) 1 Ch. 6 : 67 L.J.Ch. 47 : 77 L.T. 392 : 46 W.R. 132 : 4 Man 372 : 15 T.L.R. 30, British Asbestos Co. Limited v. Boyd (1903) 2 Ch. 439 : 73 L.J. Ch. 31 : 88 L.T. 763 : 51 W.R. 667 : 11 Man 88.

3. In the present case Article 96 of the Articles of Association of the Bank is directly in point. It is as follows: "The bonafide acts of the Board of Directors and of any committee appointed by it shall, notwithstanding any vacancy in the Board or committee or any defect in the appointment of any Director or member, be as valid as if no such vacancy or defect had existed, provided they were done in the case of any defect before its discovery." Now it is not said or at least not proved that the appointment of Fakir Chand and Abdul. Majid was made by the Directors with the knowledge that they were acting against the rules of the company or that the allotment of shares was made to the appellants by the Directors who were conscious of the defect in the constitution. of their Board. It is neither alleged nor proved that the Directors who allotted shares to the appellants acted in a mala fide manner. They, no doubt, thought that, the Board was regularly constituted and acted in a bona fide manner in allotting, shares to the appellants. The provisions of. Article 96 sufficiently cover, in our opinion, the irregularity complained of by the appellants and validate the allotments made by the Directors.

4. The second objection, that of unreasonable delay in awarding the shares, has no force. If the appellants had declined to accept" the shares allotted to them on the ground of" unreasonable delay, their objection might" have succeeded. They cannot raise that objection against their being put on the list of contributories when the Bank has gone into liquidation.

5. The third objection as to the receipt of the notice of allotment must, we think, prevail in the case of Jagminder Das. It has not been shown to us that any notice of allotment was received by him.

6. In View of our findings the result is that the appeals of Changa Mul and Durga Prasad fail and that of Jagminder Das succeeds. The appeals of Changa Mul and Durga Prasad are dismissed with costs and the appeal of Jagminder Das is decreed with costs.