(1946) 04 PAT CK 0006

In the Patna High Court

Chotanagpur Banking Association Ltd. APPELLANT

Vs

Rajib Nath Mukherjee and Others RESPONDENT

Date of Decision : 15-04-1946

Acts Referred:
Companies Act, 1956 — Section 54A, 54A(2), 55(1)

Citation : AIR 1947 Patna 40

Hon'ble Judges : Shearer, J

Bench : Division Bench

Judgement

Shearer, J.—The respondent Rajib Nath Mukherji, who was the plaintiff in the trial Court, is the son of one Parendra Nath Mukherji and the nephew of one Digendra Nath Mukherji. In 1915, Digendra Nath Mukherji borrowed a sum of money from the appellant, who is the Chotanagpur Banking Association and was the contesting defendant in the trial Court, and by way of security for its repayment executed a promissory note. Digendra Nath Mukherji died in 1921, and 2 years later, the bank obtained a decree against his widow Jyoti Bala Devi and his two brothers. Successive attempts were made to realise the amount due under the decree, but these attempts proved infructuous. Eventually, the bank attached 48 fully paid-up shares which Digendra Nath Mukherji had held in it, and, at the ensuing sale, purchased them itself. This was on 3-8-1935. The name of Digendra Nath Mukherji continued, however, to be shown in the register of share-holders, the bank apparently realising soon after the sale that it had not been open to it to purchase them. On 31-12-1935, the Secretary of the hank caused 43 out of the 48 shares to be sold and entered the names of the purchasers in the registers. Jyoti Bala Devi died on 23-2-1936, and Parendra Nath Mukherji, who survived his two brothers, died on 4-9-1940. On 2-1-1942, the plaintiff instituted the suit out of which this appeal arises. In it he asked for a declaration that the sale in execution of the decree was a nullity as also was the subsequent sale by the Secretary of the bank. He asked that the names of the purchasers of the shares should be deleted from the register and his own name should be substituted, and he asked also for a decree for any dividends which had accrued on the shares. The suit was decreed by both the Courts below and the bank has appealed.

2. Mr. P.R. Das, for the appellant, referred to Section 54A of the existing Indian Companies Act, and contended that, as the lending of money was part of the ordinary business of the appellant Company, it was permissible for it to purchase its own shares. The proviso to Sub-section (2) of Section 54A of the Indian Companies Act, has been taken bodily from Section 45(1) of the British Companies Act, 1929. I am inclined myself to think that the draftsman has fallen into an error and that the words "Provided that nothing in this section" should have been "Provided that nothing in this Sub-section." It is, however, unnecessary for me to consider this point more fully as the existing Companies Act had not yet come into operation when the sales with which we are concerned took place. The provisions of law which are applicable are Section 55(1) of the Indian Companies Act, 1913 (Act 7 [VII] of 1913), and Regulation 8 of Table A in the first schedule to that Act. It is important to notice that Article 1 of the Articles of Association of the bank states that:

The regulations in Table A, in the first schedule of Act 7 [VII] of 1913, in so far as they are not excluded or modified by these Articles, shall also apply to the Company in the same manner and to the same extent as if they were contained in these presents.

Now, Regulation 8 states:

No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company''s shares.

3. It is thus quite clear that if the amount which was bid at the sale in execution of the decree exceeded the amount due under the decree, the sale was a nullity. If the amount bid was the amount due under the decree and no more, the matter is perhaps not so free from doubt. I am, however, inclined to think that the judgment-debt must be regarded as part of the assets or of the funds of the company and; that the position is exactly the same as if money i belonging to the company had been actually paid into Court. Moreover, on general principle,'' a company cannot become a member of itself. I, therefore, agree with the Courts below that the sale was a nullity and that the bank was correct in treating it as such and in allowing the name of Digendra Nath Mukherji to remain on its register. In selling the shares or the; majority of them on 31-12-1935, the bank purported to be exercising a right conferred on it by Article 30 of its Articles of Association. This, article has to be read along with Regulations'' 9 to 11 in Table A of Schedule I to Act 7 [VII] of 1913. These regulations do not give the company a lien on shares which are fully paid shares. It is, however, open to a company to provide by its Articles of Association that it shall have a lien upon such shares as well as on other shares: see The Bradford Banking Co., Ltd. `` Briggs Ltd. (1887) 12 A.C. 29 and Bank of Africa, Ltd. v. Salisbury Gold Mining Co., Ltd. 1892 A.C. 281.

4. The lower appellate Court was of opinion that the bank could not be said to have been acting in exercise of its right under Article 30, as it omitted to issue notice on the legal representatives of Digendra Nath Mukherji and also as no resolution on the matter had been adopted at a meeting of the directors. It was not, however, essential that this matter should have been considered by the directors at a meeting. As to notice, it was, I think, obligatory on the company to give notice in writing to the legal representatives of Digendra Nath Mukherji in the manner required by regulation 10. Assuming, however, that this was not done, the sale would nevertheless be a valid sale. The concluding words in regulation 11 are:

The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

5. Mr. R.S. Chatterji, for the respondents, pointed out that the decree was passed on 15th May 1923, and that the sale by the Secretary of the bank took place on 31st December 1935. Mr. Chatterji contends that, as a period of more than 12 years had elapsed since the passing of the decree, the bank had lost any lien on the shares which it may have ever had. There is, in my opinion, no substance in this argument. It is true that the liability of Digendra Nath Mukherji or his legal representatives under the handnote had been converted into a liability under a decree. It is true that it was no longer possible for the bank to realise the amount due under the decree by putting it into execution. Nevertheless the debt itself, I think, remained, although, owing to lapse of time, no steps could be taken to recover it by process of the Courts. As the debt remained, the lien also continued. If it had been necessary for the bank to have recourse to the Courts in order to enforce its lien, then it would have been unable to obtain relief. But when Digendra Nath Mukherji purchased the shares he entered into a contract with the company, and it was a term of that contract that if he was indebted to the company it should be open to the company, of its own motion and without instituting a suit and obtaining a decree, to sell his shares.

6. For these reasons I would allow the appeal and dismiss the suit with costs throughout. I am reluctant to grant leave to appeal as it appears to me that this is a purely speculative suit. The plaintiff in effect seeks to recover shares which were the security or part of the security for money borrowed by his uncle without having repaid or even offering to repay any part of the money. The shares, moreover, have passed into the hands of other persons, and these persons may quite possibly have them selves borrowed money on the security of them, As, however, the regulations in Table A, on which I have largely based my decision, were for some reason or other not referred to by either of the learned advocates for the parties at the hearing, and as possibly the view I have taken of them may be erroneous, leave will be granted.

