(1924) 05 AHC CK 0001

In the Allahabad High Court

H. Hunter APPELLANT

Vs

Damodar Das and Others RESPONDENT

Date of Decision : 12-05-1924

Acts Referred:
Transfer of Property Act, 1882 — Section 54

Citation : AIR 1924 All 772 : 81 Ind. Cas. 508

Hon'ble Judges : Cecil Henry Walsh, Acting C.J.;Ryves, J

Bench : Division Bench

Judgement

Walsh, A.C.J.

1. This is an application, dated the 22nd April, 1924, by Mr. Hunter, the liquidator of the Bank of Upper India, Ltd., to restrain certain respondents named Damodar Das and P.N. 8. Aiyar from acting as liquidators of the Bank of Upper India, Ltd. and to restrain the two said persons and four others, namely, Piare Lal, F.W. Roberts, N.N. Das and Khan Bahadur Wahid-ud-din Saheb from pretending to be a committee of share-holders or contributories.

2. The matter came before a member of this Bench on the 22nd of April. Being obviously, a matter of urgency and importance an interim injunction was then granted, and notice was given to the respondents to appear on the 9th of May, to show cause why the injunction should not be continued. Appear they did in person, with one exception, by showing themselves in Court, but they remained concealed behind their Counsel Dr. Sen, who showed cause by advancing certain legal arguments. The matter, although urgent and important is a simple one. The only thing that causes me any surprise or cause for observation is that persons of this kind, professing themselves to be men of business and holding shares in other companies, and some actually having been Directors of such companies should be so lost to all sense of decency and business acumen as to launch an attack of this kind after seven years upon a liquidator, "by the issue of circulars and the holding of meetings, all of which purported to be done according to law, without a shadow of grievance as far as one can see, or without a shadow of a

title in law or equity behind them and should be content to do so in cold blood, and then to come up to the High Court and make piteous appeals through Counsel, (1) for an adjournment, and (2) for the decision of fancy points of law. As to what the real object of these mysterious proceedings may be and what they hoped to gain, the Court is left entirely in the dark. One can only say that their conduct is that of individuals apparently actuated by a vindictive desire to proceed against some concern or company which they wish to injure. There is some suggestion, which we have not gone into, that they have already taken active measures to injure or defeat, or delay steps that the liquidator is taking in accordance with law against some defaulters. Amongst the matters dealt with in the preliminary order, was the question of these gentlemen''s pecuniary responsibility for their conduct to the liquidator if their conduct proved wrongful, and if any real loss had been suffered. It has been agreed by Mr. O''Conor on behalf of the liquidator, Dr. Sen on behalf of Mr. Damodar Das and Mr. Piare Lal, and Saiyid Muhammad Husain on behalf of Dr. N.N. Das, K.B. Wahid-ud-din and Mr. Roberts, that the matter of their pecuniary responsibility should stand over for the present to be dealt with either on an original motion before me, or by a suit at law by. Mr. Hunter as he may be advised.

3. The history which gives rise to the contest, if it can be designated by that name, which certainly has occupied a totally disproportionate amount of the time of this Court, though important, begins with the voluntary liquidation of the Bank of Upper India Limited, in 1917, when by a resolution of the shareholders in June of that year, Mr. Hunter and his colleague, Mr. Stuart the Secretary of the Alliance Bank of Simla, Ltd., were appointed joint liquidators. In order to remove any misunderstanding, we may point out that the provisions of the Companies Act are adequate to enable any one, or any body of shareholders or contributories, if they are dissatisfied with any conduct on the part of one or both of the liquidators, to bring the matter before the Judge in winding up. So if there be any controversy, it can be decided, and the liquidator, if necessary, removed, or directed to conduct himself properly. In the event of a liquidator dying, or resigning, provision is made for the members of the company to appoint a successor. Nothing of this kind happened until February 1924, and, therefore, it must be taken that the present respondents were perfectly satisfied with the conduct of Mr. Hunter and with his joint liquidator Mr. Stuart who retired in July 1923, and that matters so continued from June 1917 until February 1924. Indeed, one of these persons, Damodar Das, has been Joint Liquidator with Mr. Hunter in the Trust of India, Limited. By an arrangement which was entered in to writing, which Mr. Hunter called an agreement for sale, namely, the document Exhibit HH 4, of July 1917, the Trust of India, Limited, which seems to have been a sort of roving financial genius exercising apparent control over the Alliance Bank and other companies, took over the assets of the Bank of Upper India. Now the assets of the Bank of Upper India were largely in the form of mortgages of Immovable property, assets which in this country, however healthy they look, undoubtedly take a very long time to realize and to produce satisfactory results,

involving for their realisation much persistent litigation, the obtaining of decrees, and applications in execution, the length and complexity of which are so familiar and so attractive to the legal profession; and it may be assumed that anybody in possession of 65 lakhs worth of that kind of asset, such as the liquidator of the Bank of Upper India Limited had to realize, might consider himself fortunate if in the course of ten years he realized 50 percent.

4. The most patient and long-suffering share-holder is apt to get despondent of his chances of getting anything out of a liquidation, which depends on this kind of business, and it is not at all remarkable that the agreement which provided for the share-holders in the Bank of Upper India being compensated by preference shares which were at that time saleable on the market in the Trust of India and the Alliance Bank of Simla should have proved an acceptable arrangement. So far as it is material to this enquiry, it is only necessary to state that the 5 per cent, preference share-holders in the Bank of Upper India took 6 per cent, preference shares in the Alliance Bank of Simla and that the ordinary share-holders in the Bank of Upper India took half of their holding in 6 per cent, preference shares in the Alliance Bank and half in 6 per cent, preference shares in the Trust of India. Though the share-holders included the present respondents, the evidence with regard to this matter and its history stand on the uncontradicted sworn testimony of Mr. Hunter himself. In substance, he was giving us an account of what his knew, but as regards details he was only able to state being himself a manager with a large staff, what he believed had been carried out by his staff in detail. With regard to these particular shares and the execution of the agreement by the share-holders he stated in the presence of the respondents with the exception of Mr. Aiyar, who was absent, and he was not contradicted, that the transaction was carried through, not precisely as it was contemplated by the original provisions in the deed which was drawn up by the lawyers, but that the share-holders in the Bank of Upper India surrendered their shares or scrip and applied through the liquidator to the Trust of India and the Alliance Bank of Simla, as the case might be, for the issue to them of the preference shares to which they were entitled, and the records of these transactions were kept temporarily by Mr. Laver under the instructions of Mr. Hunter, and are duly recorded in the books, which, if they were wanted, could be found at Simla. Nobody asked to see the books here before us, and Dr. Sen very properly on the instructions of his clients accepted this statement as correct. The result is that the respondents who held this meeting and issued circulars were from the moment they gave up their shares and took the preference shares in the other companies, no longer share-holders or members of the Bank of Upper India, and had no footing, or authority of any kind either for the election of the liquidator or for any other purpose whatsoever, and unless they knew that, they must be profoundly ignorant of company business and Company Law. They seemed in the document which they drew up describing their own character to be conscious of the uncertainty which surrounded their own position, because they sometimes described themselves as share-holders, and sometimes described themselves as

con-tributories. If the comparison were of any value, it would be difficult to say which ;; description was the more inaccurate. Mr. O''Conor gave the final blow to the contributory argument by quoting Sub-section (4) of Section 156, which provides that no contribution is required from any member exceeding the face value of his holding; in other words, the holder of shares, whose shares are fully paid at the time of the commencement of the liquidation, is not a contributory, and, indeed, he would have a grievance against the liquidator if he were put on the list of contributories. It is, therefore, sufficient for the purpose of this case to hold, what is undoubtedly the fact, that these gentlemen, at the time when they took these proceedings in February 1924, were Hot, and had not been for a very considerable time, either share-holders or contributories in the Bank of Upper India. The result is that their proceedings had no legal foundation and were totally misconceived. It is due to their clerical ability, based on the only study of Company Law, of which they have shown signs in these proceedings, to say that the proceedings at the meeting, assuming that the meeting had any legal character or validity, are quite stainless in character and unimpeachable. It would be difficult to find proceedings so utterly without foundation, carried out in such perfect order and propriety. We examined the Minute Book, and it is due to them to say that they did their best in a hopeless state of things to make their position secure from attack.

5. Out of respect for the vigorous argument of Dr. Sen, we have to take notice of his contention that, as a matter of fact, in the legal sense of the word, we are back in the year 1917, and that when these gentlemen exchanged their shares, and even took proceedings or raised objections as preference shareholders in the Trust of India, Limited, they were living in a fool''s paradise, and were really all the time share-holders in the Bank of Upper India and had no concern whatever with either the Trust of India, Ltd. or the Alliance Bank of Simla. All this is based upon the contention that there was no transfer of property in the terms of Section 54 of the Transfer of Property Act, and that the agreement of sale (Exhibit HH4) had no validity or legal effect, in spite of its having been carried out so far as these gentlemen are concerned in every particular. By way of parenthesis, one may say that there is a small residue of share-holders who have not been heard of during the liquidation, and are never likely to be seen again, who have been unable to accept or repudiate the provisions of this deed, because the liquidator was unable to find them; and to that extent the agreement for sale is unexecuted, but so far as these respondents are concerned it has been duly executed and performed, The argument of Dr. Sen raises a question which is much debated in the Courts of India, as to how far transactions which do not purport to comply with statutory requirement''s, although in every other way the object to be achieved by the transfer or exchange has been executed, can be recognized in law or rather at equity, so as to bind the parties by their conduct so irrevocably as to make it impossible for them to re-open the transactions or retrace their steps. I doubt whether this question really arises, but as Dr. Sen has argued it, it is only right that it should be dealt with. I am

content to answer it in the same way that I answered it in my judgment in the case reported as Salamat-uz-Zamani Begam v. Msha Allah Khan 13 Ind. Cas. 645 : 40 A. 187 : 16 A.L.J. 98, obeying what I believe to be the positive direction given to the Courts in India by the Privy Council in the case of Mahomed Musa v. Aghore Kumar 28 Ind. Cas. 930 : 42 C. 801 : 17 Bom. L.R. 420 : 21 C.L.J. 231 : 28 M.L.J. 548 : 19 C.W.N. 250 : 13 A.L.J. 229 : 17 M.L.T. 143 : 2 L.W. 258: (1915) M.W.N. 621 : 42 L.A. 1 (P.C.). That is to say, that apart from any action under the Companies Act, the rights which have arisen out of the execution of this deed of July 1917, are as binding on the parties holding the benefits which they have taken thereunder, as if it had been decided to effect the transaction by a formal transfer, that is to say, a registered deed as required by Section 54 of the Transfer of Property Act. My reason for holding that Section 54 has no application is that there was no transfer. The Trust of India had power to ask for one and the Bank of Upper India undertook to execute one. If the Trust of India did not demand one, as, in fact, it never did, the question does not arise. The exchange has been made; the matters have passed into history and the legal rights of the parties have been settled without the necessity of a formal document.

6. The result of this decision is that the whole of the proceedings of the 3rd of February, 1924, were void and inoperative, and we so declare them. The effect of this is that as regards Mr. Aiyar, the absent respondent, his so-called appointment as joint liquidator with Damodar Das is a nullity; and he will take any proceedings, or profess himself to be the joint liquidator of the company, at his peril. But inasmuch as we were compelled to direct service upon him in Lahore outside our own jurisdiction, we are not satisfied that he has been served in accordance with law in the sense that enables us to make a final order against him in the way in which we are doing as against the other respondents. But that will in no way prevent him from coming here, on due notice to Mr. O''Conor and Mr. Hunter, at such time and date as the Court may find convenient to fix to hear him, in order to repair the omission caused by his absence to-day; and even, if he should desire, to set a good example to his collegaues by going into the box and submitting himself on oath to cross-examination. We, therefore, continue against him the ex parte interim injunction granted on Mr. Hunter''s application, which is to continue until further order with liberty to him after due notice to the other side to come up and show cause why it should be set aside.

7. Ryves, J.--I agree with the order of my learned colleague. I base, my decision on one short point. All the respondents were share-holders in the Bank of Upper India, Limited. The shares were fully paid up. After that the Bank went into liquidation; they surrendered their shares to the Trust of India, Limited, and in lieu thereof received preference shares in the Trust of India, Limited, and in the Alliance Bank of Simla, Limited. From that moment it seems to me that they ceased to be members of the Bank of Upper India, Limited, and, therefore, they had no authority on the 3rd of February, 1924, to hold the meeting which they called as share-holders or contributaries of the Bank of Upper India, Limited, and

that the resolutions which they passed at that meeting were consequently altogether invalid and inoperative. On the serious question of law which was argued I prefer to give no opinion. It may be that the parties infer se are estopped from disputing the transfer, although in law no valid transfer has taken place so far as Immovable properties or securities on such Immovable properties of over Rs. 100 in value, are concerned. To illustrate what I mean, if Mr. Hunter as liquidator of the Trust of India were to sue to recover mortgage-money as an assignee of the Bank of Upper India, Limited, it might beheld that he could not do so because there was no assignment valid in law according to Section 54 of the Transfer of Property Act. But what he did do, was to sue on behalf of the Bank of Upper India Limited, the mortgagee, as liquidator, and having got a decree and realized the money, paid that money over to the Trust of India, Limited.

8. By the Court.--The order of the Court is that we make the interim injunction granted on April the 22nd against the five respondents other than Mr. P.S.N. Aiyar, permanent. We declare that the meeting of the 3rd of February, 1924, was null and void and of no effect; and that the appointments of Mr. Damodar Das and Mr. Aiyar as joint liquidators were illegal; as also the appointments of Messrs. N.N. Das, Piare Lal, Roberts and K.B. Wahiduddin as a committee to-control the actions of Mr. Hunter.

9. The, five respondents who appear jointly and severally, must pay the certified costs of Mr. O''Conor''s client.

