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**(1921) 02 AHC CK 0046**

**In the Allahabad High Court**

Hari Ram APPELLANT

Vs

The Commercial Bank Limited RESPONDENT

**Date of Decision :** 28-02-1921

**Acts Referred:**

**Citation :** AIR 1921 All 49 : 62 Ind. Cas. 889

**Hon'ble Judges :** Walsh, J;Ryves, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

1. This appeal arises out of the liquidation of the Commercial Bank of India, Limited. Hari Ram, the appellant, received a letter from the Official Liquidator, dated the 26th of April 1918 sailing on him to pay Rs. 500 representing the uncalled capital promised by him on his application for shares but not paid up. Hari Ram objected and asked to have his name removed from the list of contributories, on the ground that he had already paid up this amount on the 28th of February 1914. The learned District Judge overruled this objection. He appears to have tried the matter in a somewhat summary way, as is often the casein these liquidation proceedings. Hari Ram went into the witness-box and swore that he had paid the amount, and in proof the day-book of the Bank was produced, which showed that on the 28th of February 1914 Hari Ram did pay in Rs. 500 to the capital account of the Company. The learned District Judge tested the statement by examining Hari Ram as to certain debit entries made on that date and, subsequently, and because be was not satisfied with Hari Ram''s recollection about them, he come to the conclusion that probably these entries, both to credit and debit, were all made while the books were in the possession of the appellant, and were in fast forgeries, and that he had paid nothing.

2. The Commercial Bank of India, Limited, was incorporated in February 1913. Hari Ram was one of the original Directors but, from the very beginning, the whole work of the Bank was left in the hands of one Kampta Prasad, who was the Manager. The Directors did nothing until the 21st of February 1914, when

Kampta Prasad ran away. Hari Ram and a brother Director then went and examined the books of the Bank and found that the amount of sash in band amounted to Rs. 1-4 only. Neither of them had paid up any of the Rs. 500 which was due from them, and on the 28th of February both of them paid up Rs. 500 each to the capital account, and with the money so received proceeded to carry on the Bank. They succeeded in carrying on until the 19th of May 1914, when the Company went into voluntary liquidation. The day-book, admirably kept up, shows that for months previously, the cash in hand was only a few rupees. We examined Hari Ram in Court. He was then able for the first time to produce a letter, which made it highly probable that an item of Rs. 97-6, which he said was paid to a firm in Calcutta on the 28th of March 1914, was true but which had been discredited by the Court below. It appeared to us that if any one single entry subsequent to the 28th February 1914 was true, the sweeping condemnation of the District Judge that the books were probably forged, was untenable. On further questioning, Hari Ram informed us that the vouchers for all the other entries which would prove the genuineness of these entries must be in the possession of the Official Liquidator. We thereupon asked the Official Liquidator to produce all the documents in his possession. They have been produced to day, and it is quite obvious that every one of these payments and entries is proved up to the hilt. If these documents had been before the learned District Judge, he could not have come to the finding which he did; and of coarse they should have been before him. It is part of the duty of the Offiical Liquidator, who is really an officer of the Court, to have all the relevant books and papers ready in Court. We, therefore, hold it proved that Hari Ram did pay into the capital account of the Company on the 28th of February 1914 the sum of Rs. 500.

3. There remains the question as to how that payment should be treated under the circumstances. Should it be treated as a loan to the Company, in which case of course, Hari Ram could only recover as a creditor, or should it be treated as a payment towards the capital of the Company. Hari Ram swore on oath that before that payment was made, he and the other Director, Bhagwan Das, passed a resolution, duly recorded in the minutes of the Directors, calling upon them to pay up their calls. That book of minutes was handed oyer to Pandit Chandarchur Pande, the then Liquidator, on the 23rd of May 1914. His receipt of it is on the record (Exhibit D). Pandit Chandarchur Pande is dead and the present Liquidator says that that particular book is not now in his possession and that he does not know where it is. Under these circumstances we have no hesitation in believing Hari Ram on this point, especially as his other statements have all been proved to be true. It seems to us that it would be hard, after a delay of 6 years nearly, to order Hari Ram to repay his Rs. 500 as uncalled capital, unless we were forced by a clear rule of law on the subject. There is no case, so far as we are aware of, in India on the point, but the case of Wincham Shipbuilding, Boiler and Salt Company, In re, Poole, Jackson, and Whyte''s case (1878) 9 Ch. D. 222 : 38 L.T. 659: 26 W.R. 828 is authority for holding that under similar circumstances such a payment by Directors, although they knew that the Company was insolvent, may

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be treated as a payment towards capital. As a matter of fact it was so intended in this case and was so treated. The Directors after all are trustees for the Company, that is, the share holders, and not for the creditors. In our opinion this appeal must succeed. We set aside the order of the District Judge and order that the name of Hari Ram be removed from the list of contributories with costs, including in this Court fees on the higher scale.

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