(1956) 09 MAD CK 0008

In the Madras High Court

Case No : Original Side Appeal No. 69 of 1955

Hindustan Investment and Financial Trust Ltd. APPELLANT

Vs

C.S. Sastry (Voluntary liquidator) RESPONDENT

Date of Decision : 06-09-1956

Acts Referred:

Companies Act, 1913 — Section 192
Companies Act, 1956 — Section 475

Citation : AIR 1957 Mad 262 : (1957) 70 LW 18

Hon'ble Judges : Rajamannar, C.J;Ramaswami, J

Bench : Division Bench

Advocate : V. Radhakrishnan, for the Appellant; K.S. Varadachari, R. Narsimhachari and N. Varadarajan, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the judgment of Ramaswami Goundar J. on an application for certain directions taken out by

the Voluntary liquidator of a company in liquidation called the Chicacole Electric Supply Corporation Ltd., and related to the rights of preference

share-holders in the company, whether they are entitled ""o be paid arrears of dividend from and out of the assets of the company. The relevant

Article in the Articles of Association of the Company is Article 16 which runs thus:

(a) The preference shares shall carry a divident of six per cent subject to deduction of Income Tax at source. Such dividends are calculable from

the date of allotment on the amounts received by the company.

(b) The preference shares shall carry the right to preferential repayment of capital in priority to the ordinary shareholders in the event of winding up,

voluntary liquidation Or amalgamation with any other company for the amount paid up on the preference shares, including all dividends whether

accrued or declared (current and all arrears) till the date of such winding up, liquidation Or amalgamation with any other company."". Clause (c) is

not material.

2. The provision in Article 16 Clause (b) leaves no room for doubt in the matter, It clearly confers on the preference shareholders a right to be paid

both their share money as well as the dividends which had accrued year after year and which remained unpaid.

3. Our attention was not drawn to any other Article which conferred the right on the preference share-holders to the dividend at the specified rate

only when the company earned profits. The dividend at the rate specified therefore would accrue every year, though if there was no profit in any

year and no money available for payment, the preference shareholders would not be paid the amount of dividend which had accrued.

It is conceded that if in a subsequent year pro fit was made, the preference shareholders would be entitled not only to the dividend for that year but

also for the dividend which had accrued for the previous years.

4. In the face of the clear language of Article 16 it is not necessary to refer to decided cases. If authority were needed, it is sufficient to mention the

decision in Springbgok Agricultural Assets Ltd., 1920 1 Ch. 563 (A) which was followed in a recent case reported in In re Wharfedale Brewery

Co. Ltd., 1952 1 Ch. 913 (B).

5. Reliance was placed by Mr. Radhakrishnan for the appellant who is an ordinary shareholder, on the decision of Gentle J., as he then was, in

M.F.R. D''Cruz Vs. K.N. Viswanathan (the Official Liquidator), . Ramaswami Goundar J. was inclined to think that the decision was wrong but

we are not compelled to say so because Gentle J. appears to have been much influenced by Article 155 of the Articles of Association of the

Company with which he was dealing in coming to the conclusion that he did. That article ran as follows:

No dividend shall be payable except out of the net profits arising from the business of the com pany.

It is mainly on the language of this Article that the learned Judge had held that as the company there never made any profits, no dividend accrued.

The learned Judge observed:

In my view, as there were no profits, no dividends could be declared and were not declared, nothing is payable to the preference shareholders la

respect of dividend or interest and they are entitled only to repayment of the actual share capital.....

The learned Judge does not refer to the case of dividends not being declared but which had accrued because of the terms and conditions under

which preference shares were issued. It is not necessary, in the view we have taken of Article 16 of the Articles of Association of the company, to

pronounce On the correctness of the decision in M.F.R. D''Cruz Vs. K.N. Viswanathan (the Official Liquidator), . We agree with the learned

Judge that the preference share-holders were ea-titled to be paid all arrears of dividends from out of the surplus assets of the company after

payment of the preference share capital.

6. The appeal is therefore dismissed. The respondents will get their costs - two sets - from the assets of the company.